

IN THE IOWA DISTRICT COURT FOR LEE COUNTY

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STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL RESOURCES
(99AG23542),

Plaintiff,

vs.

ROQUETTE AMERICA, INC., a Delaware
Corporation,

Defendant.

LAW NO.

EQQ 4303(6)

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (IDNR) and for its claims against Defendant Roquette America, Inc. (Roquette) states as follows:

Introduction

1. The IDNR seeks the assessment of civil penalties and injunctive relief against Roquette for air pollution control violations committed at or in relation to Roquette's corn wet milling facility located in Keokuk, Lee County, Iowa.
2. Count I seeks the assessment of civil penalties and injunctive relief against Roquette for violations of Prevention of Significant Deterioration (PSD) requirements. Roquette illegally modified its method of operations by changing from use of coal to a blended fuel of coal and petroleum coke, resulting in significant increases in sulfur dioxide emissions, without complying with State and federal requirements to prevent the significant deterioration of air quality, including but not limited to failure to implement the best available control technology.
3. Count II seeks civil penalties and injunctive relief against Roquette for violations of New Source Performance Standards (NSPS). Roquette illegally modified its method of

operations by changing from use of coal to a blended fuel of coal and petroleum coke, resulting in increases in sulfur dioxide emissions, without complying with applicable monitoring and emission performance standards for new sources, including but not limited to failure to comply with the sulfur dioxide performance standard (at least a 90% reduction in sulfur dioxide).

4. Count III seeks civil penalties and injunctive relief against Roquette for violations of Administrative Consent Order No. 2003-AQ-04. Roquette has failed to comply with the order by withdrawing Roquette's then pending PSD permit applications and plans for obtaining compliance with new source performance standards, and by failing to take steps to insure timely compliance with new source performance monitoring and emission standards.

Parties

5. The State of Iowa is a sovereign state of the United States of America.

6. The IDNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

7. Roquette America, Inc. is a Delaware corporation authorized to do business in the State of Iowa.

Jurisdiction

Air Pollution Control

8. The IDNR is the state agency with the duty to prevent, abate, or control air pollution. Iowa Code § 455B.132. The specific administrative and enforcement duties of the IDNR director relating to air pollution control are contained, in part, in Iowa Code sections 455B.134(1)-(13).

9. The IDNR director is authorized to grant construction or operation permits for new, modified, or existing air contaminant sources and for related control equipment. Iowa Code § 455B.134(3).

10. The IDNR director is authorized to issue administrative orders to cause abatement or control of air pollution, or to secure compliance with permit conditions. Iowa Code § 455B.134(9).

11. The Iowa Environmental Protection Commission (EPC) is authorized to adopt rules for the abatement, control, and prevention of air pollution. Iowa Code § 455B.133(2). The rules may include those that are necessary to obtain approval of the state implementation plan (SIP) under section 110 [42 U.S.C. § 7410] of the federal Clean Air Act. Id. Air pollution control rules are contained in 567 Iowa Admin. Code chapters 20 - 29, and 31.

12. If any order, permit or rule of the IDNR is being violated, the Attorney General shall, at the request of the IDNR director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed Ten Thousand Dollars (\$10,000.00) per day for each day such violation continues, or both such injunctive relief and civil penalty. Iowa Code § 455B.146.

General Definitions

13. "Air contaminant" means "dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof." Iowa Code § 455B.131(1).

14. "Air contaminant source" means "any and all sources of emission of air contaminants whether privately or publicly owned or operated." Iowa Code § 455B.131(2).

15. "Air pollution" means "presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property." Iowa Code § 455B.131(3).

16. "Emission" means "release of one or more air contaminants into the outside atmosphere." Iowa Code § 455B.131(6).

17. "Major stationary source" means "a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the department [IDNR] or the administrator of the United States [E]nvironmental [P]rotection [A]gency [EPA]." Iowa Code § 455B.131(7).

18. "Potential to emit" means "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design as defined in rules adopted by the department [IDNR]." Iowa Code § 455B.131(10); see also 567 Iowa Admin. Code 20.2.

Prevention of Significant Deterioration (PSD)

19. The federal Clean Air Act requires the EPA to establish National Ambient Air Quality Standards (NAAQS). 42 U.S.C. § 7409(a)(1). Primary and secondary NAAQS are prescribed to protect the public health and welfare, respectively. 42 U.S.C. §§ 7409(b)(1) and (2); 40 C.F.R. § 50.2(b). Primary and secondary NAAQS have been adopted for six pollutants: sulfur oxides (sulfur dioxide)(SO₂), particulate matter with an aerodynamic diameter less than or

equal to 10 micrometers (PM₁₀), carbon monoxide (CO), ozone (O₃), nitrogen dioxide (NO₂), and lead (Pb). 40 C.F.R. §§ 50.4 - 50.12. All areas of the State of Iowa have been designated as being in attainment or unclassifiable for each primary and secondary NAAQS. 40 C.F.R. § 81.316.

20. For areas which are designated in attainment with NAAQS or unclassifiable, the federal Clean Air Act includes a program to prevent significant deterioration (PSD) of air quality. 42 U.S.C. §§ 7470-7479. Preconstruction requirements are imposed on any major emitting facility to prevent significant deterioration of the air quality. 42 U.S.C. § 7475.

21. For purposes of the PSD program, "construction" also includes "modification," as defined in 42 U.S.C. section 7411(a), of any source or facility. 42 U.S.C. § 7479(2)(C). "Modification" means "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." 42 U.S.C. § 7411(a)(4).

22. EPA rules implementing the PSD program are contained, in part, in 40 C.F.R. section 52.21. The EPA has approved the State of Iowa's program to implement PSD permit requirements. 52 Fed.Reg. 23981 (1987).

23. No person shall construct, install, reconstruct or alter any equipment or control equipment without first obtaining a construction permit or permits required pursuant to 567 Iowa Admin. Code 22.4. 567 Iowa Admin. Code 22.1(1).

24. IDNR rule 567 Iowa Admin. Code 22.4 adopts the federal PSD regulations contained in 40 C.F.R. section 52.21, as amended through March 12, 1996, except for section 52.21(a)

(plan disapproval), section 52.21(q) (public participation), section 52.21(s) (environmental impact statement), and section 52.21(u) (delegation of authority), as provided in 567 Iowa Admin. Code 22.4(1).

25. The PSD requirements contained in 40 C.F.R. section 52.21 apply to any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act. 40 C.F.R. § 52.21(a)(2)(i).

26. "Major stationary source" means any of several designated "stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant" including "fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input" or "any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR [New Source Review] pollutant." 40 C.F.R. §§ 52.21(b)(1)(i)(a) and (b)(1)(i)(b).

27. "Stationary source" means "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant." 40 C.F.R. § 52.21(b)(5).

28. The PSD requirements contained in 40 C.F.R. sections 52.21(j) - (r) apply to any major modification of an existing major stationary source, except as otherwise provided. 40 C.F.R. § 52.21(a)(2)(ii).

29. "Major modification" means "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emissions increase from the major stationary source." 40 C.F.R. § 52.21(b)(2)(i).

30. "Significant net emissions increase" means "for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (b)(23) of this section) for that pollutant." 40 C.F.R. § 52.21(b)(40).

31. "Significant" means, in reference to a net emissions increase, a rate of emissions that would equal or exceed inter alia 40 tons per year (tpy) of sulfur dioxide (SO₂). 40 C.F.R. § 52.21(b)(23)(i).

32. "Net emissions increase" means the amount by which the sum of "the increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and . . . [a]ny other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable" exceeds zero. 40 C.F.R. §§ 52.21(b)(3)(i)(a) and (b).

33. "Regulated NSR pollutant" means inter alia "any pollutant for which a national ambient air quality standard has been promulgated." 40 C.F.R. § 52.21(b)(50).

34. A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan (SIP), and each applicable emissions standard and standard of performance under 40 C.F.R. Parts 60 and 61. 40 C.F.R. § 52.21(j)(1).

35. A major modification shall apply best available control technology (BACT) for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. 40 C.F.R. § 52.21(j)(3).

36. "Best available control technology" (BACT) means "an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each

pollutant subject to regulation under [the Clean Air Act] . . . which would be emitted from any proposed major stationary source or major modification" which the IDNR "on a case-by case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques" 40 C.F.R. § 52.21(b)(12).

37. The owner or operator of a proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, would not cause or contribute to air pollution in violation of any NAAQS or any maximum allowable increase over the baseline concentration in any area. 40 C.F.R. §§ 52.21(k)(1) and (2).

38. The analysis of ambient air quality in a PSD permit application shall contain continuous air quality monitoring data, for at least the one year preceding receipt of the permit application unless a shorter period is approved. 40 C.F.R. § 52.21(m)(1)(iv).

39. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required by PSD review. 40 C.F.R. § 52.21(n).

40. The owner or operator of a source or modification shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. 40 C.F.R. § 52.21(o)(1).

41. The owner or operator of a source or modification shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification. 40 C.F.R. § 52.21(o)(2).

New Source Performance Standards

42. The federal Clean Air Act requires the EPA to establish New Source Performance Standards (NSPS) for emission of air pollutants. 42 U.S.C. § 7411(b). Standards have been adopted in 40 C.F.R. Part 60. Subpart Db of 40 C.F.R. Part 60 establishes standards of performance for industrial-commercial-institutional steam generating units. Subpart Db applies to any steam generating unit that has a heat input capacity from combusted fuels greater than 100 million Btu (British thermal units)/hour. 40 C.F.R. § 60.40b(a).

43. IDNR rule 567 Iowa Admin. Code 23.1(2) adopts the federal standards of performance for new stationary sources, as defined in 40 C.F.R. Part 60 as amended or corrected through December 19, 2003. IDNR rule 567 Iowa Admin. Code 23.1(2)"ccc" adopts 40 C.F.R. Part 60, Subpart Db.

44. The provisions of 40 C.F.R. Part 60 apply to the owner and operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of any standard applicable to that facility or any new or revised standard applicable to that facility. 40 C.F.R. §§ 60.1(a) and (b).

45. As used in 40 C.F.R. Part 60, an "affected facility" means "with reference to a stationary source, any apparatus to which a standard is applicable." 40 C.F.R. § 60.2.

46. As used in 40 C.F.R. Part 60, "modification" means "any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air

pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted." 40 C.F.R. § 60.2.

47. Any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere. 40 C.F.R. § 60.14(a).

48. 40 C.F.R. Part 60, Subpart Db, applies to each steam generating unit that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 100 million Btu/hour. 40 C.F.R. § 60.40b(a).

49. As used in Subpart Db, "steam generating unit" means "a device that combusts any fuel or byproduct/waste to produce steam or to heat water or any other heat transfer medium." 40 C.F.R. § 60.41b.

50. As used in Subpart Db, "coal" means "all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388-77, 90, 91, 95, or 98a, Standard Specification for Classification of Coals by Rank, (IBR-see § 60.17), coal refuse, and petroleum coke." 40 C.F.R. § 60.41b.

51. No owner or operator of an affected facility that combusts coal or oil subject to Subpart Db shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 10 percent of the potential sulfur dioxide emission rate (90 percent

reduction), and that contain sulfur dioxide in excess of the emission limit determined according to the formula set out in 40 C.F.R. section 60.42b(a). 40 C.F.R. § 60.42b(a).

52. The sulfur dioxide emissions standard contained in 40 C.F.R. section 60.42b applies at all times. 40 C.F.R. § 60.45b(a).

53. Within 60 days after achieving the maximum production rate at which an affected facility will be operated, but not later than 180 days after initial startup of such facility, the owner or operator of such facility shall conduct performance tests. 40 C.F.R. § 60.8(a).

54. The owner and operator of an affected facility subject to Subpart Db shall conduct performance tests to determine compliance with the percent of potential sulfur dioxide emission rate and the sulfur dioxide emission rate pursuant to 40 C.F.R. section 60.42b. 40 C.F.R. § 60.45b(c).

55. After achieving the maximum production rate at which the affected facility will be operated, the first operating day included in the initial performance test shall be scheduled within 30 days, but not more than 180 days after initial startup of the facility. 40 C.F.R. § 60.45b(c)(1).

56. The owner or operator of an affected facility subject to the sulfur dioxide standards under 40 C.F.R. § 60.42b shall install, calibrate, maintain, and operate continuous emission monitoring systems (CEMS) for measuring sulfur dioxide concentrations and shall record the output of the systems. Monitoring shall be at both the inlet and outlet of the sulfur dioxide control device. 40 C.F.R. § 47b(a).

57. The owner or operator of an affected facility shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive boiler operating days. 40 C.F.R. § 60.47b(c).

Facts

Roquette's Corn Wet Milling Facility

58. Roquette owns and operates a corn wet milling facility located at 1003 South 5th Street, Keokuk, Iowa.

59. Roquette manufactures at its corn wet milling facility a variety of corn starches, starch derivatives, and other products of the corn wet milling process, including modified and unmodified starches, corn syrups, high fructose corn syrups, maltodextrin, spray dried glucose syrups, food grade dextrose, pharmaceutical grade dextrose, polyols (including liquid sorbitol, crystalline sorbitol, maltitol, mannitol, xylitol and hydrogenated glucose syrups) and corn steep liquor.

60. The Roquette corn wet milling facility includes numerous pieces of equipment which emit or have the potential to emit air pollutants. There are 161 emission units with 124 emission points at the facility.

61. The facility includes Emission Point No. 77-8, which is the emission point for Emission Unit Nos. BH-4, BH-5, and BH-6. Emission Unit Nos. BH-4 and BH-5 were originally installed on June 1, 1945, and November 15, 1959, respectively. Emission Unit No. BH-6 was installed on June 1, 1986. Each of these emission units generates a variety of air pollutant emissions including but not limited to sulfur dioxide.

62. Roquette has never installed air pollution control equipment to reduce sulfur dioxide emissions from Emission Unit Nos. BH-4, BH-5, and BH-6. The only air pollution control equipment for Emission Unit Nos. BH-4 and BH-5 are multiclones, and a baghouse for Emission Unit No. BH-6, designed to reduce particulate matter emissions.

Use of Lower Sulfur Coal to Avoid PSD Requirements for Sulfur Dioxide

63. On December 26, 1984, the Hubinger Company, predecessor to Roquette, applied to the United States Environmental Protection Agency (EPA) for a PSD permit to construct a new emission unit, later designated Emission Unit No. BH-6. The application was made to the EPA because the State of Iowa's PSD permitting program was not approved by the EPA until 1987. The permit application provided that only lower sulfur coal from southern Indiana, and eastern and western Kentucky would be used.

64. On or about March 28, 1985, the Hubinger Company amended its permit application by proposing to avoid triggering PSD requirements for sulfur dioxide by reducing the sulfur dioxide emission rate for existing Emission Unit Nos. BH-4 and BH-5 and proposed Emission Unit No. BH-6, derating the heating capacity of Emission Unit No. BH-4, and using the same lower sulfur coal in each emission unit.

65. On or about January 23, 1986, the EPA issued a PSD permit to the Hubinger Company for what is now Emission Unit No. BH-6. The PSD permit regulated nitrogen oxides and carbon monoxide, but not sulfur dioxide because reduction in the sulfur dioxide emission rates for Emission Unit Nos. BH-4 and BH-5 and new Emission Unit No. BH-6, derating of the heating capacity for Emission Unit No. BH-4, and use of low sulfur fuel for all three emission units made PSD requirements inapplicable for sulfur dioxide. The PSD permit provides that it applies to any subsequent owner or operator and that "any owner/operator who constructs, modifies, or operates an affected facility not in accordance with the PSD permit application as reviewed, and approved, or not in accordance with the PSD permit as conditioned herein is subject to an enforcement action" under 42 U.S.C. §§ 7413 and 7477.

Roquette's Change in the Method of Operation by Use of Petroleum Coke

66. On June 1, 2002, the IDNR received a citizen complaint that Roquette was burning petroleum coke in one or more boilers at the facility. Petroleum coke is a by-product from oil refineries and is composed mainly of carbon with high levels of sulfur and heavy metals.

67. On June 11, 2002, the IDNR investigated the citizen complaint and determined that Roquette had changed its fuel for Emission Unit Nos. BH-4, BH-5, and BH-6, from coal to a blended fuel of coal and petroleum coke at an approximate ratio of 19:1, coal to coke.

68. Roquette used the blended fuel of coal and petroleum coke at least from April 2000 through June 2002 in Emission Unit Nos. BH-5 and BH-6. The blended fuel was also used in Emission Unit No. BH-4 until late 2001 when the unit experienced mechanical problems, partially attributed to burning the petroleum coke. Since April 2000, Roquette burned over 13,000 tons of petroleum coke.

69. None of Emission Unit Nos. BH-4, BH-5, or BH-6 was originally designed or constructed to accommodate petroleum coke as a fuel.

70. None of Roquette's annual emission inventories, Title V fee calculations and payments, and coal analyses submitted to IDNR for 2000, 2001, and 2002, reflected that Roquette had changed fuels for Emission Unit Nos. BH-4, BH-5, and BH-6.

71. Roquette's change from coal to a blended fuel of coal and petroleum coke resulted in an increase in sulfur dioxide emissions of at least several hundred tons per year:

Emission Unit Number	Increased sulfur dioxide (SO ₂) Emissions
Emission Unit BH-4	71.67 tons per year (tpy)
Emission Unit BH-5	136.16 tpy
Emission Unit BH-6	91.39 tpy
Total	299.22 tpy

72. Roquette did not apply for a Prevention of Significant Deterioration of Air Quality (PSD) permit prior to changing its operation to burning blended fuel of coal and petroleum coke.

73. Roquette has failed to utilize the best available control technology (BACT) to control the sulfur dioxide emissions from Emission Unit Nos. BH-4, BH-5, and BH-6.

74. Roquette has failed to comply with the NSPS sulfur dioxide performance standard for Emission Unit Nos. BH-4, BH-5, and BH-6.

Administrative Consent Order No. 2003-AQ-04

75. On January 31, 2003, Roquette entered into IDNR Administrative Consent Order No. 2003-AQ-04. The order imposed numerous requirements on Roquette to bring Roquette's facility into compliance with air quality control requirements including air quality construction permitting and emission testing requirements.

76. Section IV, paragraphs 5, 6 and 7 of Administrative Consent Order No. 2003-AQ-04 require Roquette to submit within 180 days of the date of the order a complete PSD permit application for each of Emission Unit Nos. BH-4, BH-5, and BH-6. The PSD permit applications were due on July 30, 2003.

77. Section IV, paragraph 8 of Administrative Consent Order No. 2003-AQ-04 requires Roquette to submit within 180 days of the date of the order a written compliance plan detailing

how Roquette would comply with the NSPS requirements contained in 40 C.F.R. Part 60, Subpart Db, for Emission Unit Nos. BH-4, BH-5, and BH-6. The NSPS compliance plan was due on July 30, 2003.

78. Section IV, paragraph 9 of Administrative Consent Order No. 2003-AQ-04 requires Roquette to submit within 36 months of the date of the order written emission testing results for Emission Unit Nos. BH-4, BH-5 and BH-6, demonstrating compliance with the sulfur dioxide emissions limits contained in 40 C.F.R., Part 60, Subpart Db.

79. Section IV, paragraph 10 of Administrative Consent Order No. 2003-AQ-04 requires Roquette within 36 months of the date of this order to install, calibrate, and operate a Continuous Emissions Monitor for sulfur dioxide to monitor the emissions from Emission Unit Nos. BH-4, BH-5, and BH-6, as required by the provisions of 40 C.F.R. Part 60, Subpart Db.

80. On July 29, 2003, Roquette submitted an incomplete PSD permit application for each of Emission Unit Nos. BH-4, BH-5 and BH-6. The PSD permit applications acknowledged that the use of the blended fuel resulted in significant increases in sulfur dioxide emissions requiring PSD review. The applications also purported to be Roquette's plan for complying with NSPS, Subpart Db requirements.

81. Roquette made a number of additional submittals and then completed its PSD applications on or about July 15, 2004.

82. Roquette proposed and the IDNR agreed that the appropriate air pollution control technology for implementing BACT for Emission Unit Nos. BH-4, BH-5, and BH-6 would be dry flue gas desulfurization (dry scrubber). The IDNR determined that the BACT emission limit

for this air pollution control technology would result in at least a 95% reduction in SO₂ emissions.

83. The IDNR prepared draft PSD permits and provided them to Roquette which provided comments on or about September 1, 2004.

84. On October 25, 2004, the IDNR issued for public comment draft PSD permits which when issued would allow Roquette to implement BACT and its NSPS compliance plan for Emission Units No. BH-4, BH-5, and BH-6. The public notice and permit drafts deleted certain air quality control information that Roquette sought to withhold from the public. Owing to objections from the EPA that the draft permits did not comply with public notice requirements, the IDNR withdrew the draft permits from public comment on November 22, 2004, pending resolution of the public notice issues.

85. On December 14, 2004, Roquette withdrew its then pending PSD permit applications and the incorporated NSPS compliance plans. No alternative PSD permit applications have been submitted by Roquette for Emission Unit Nos. BH-4, BH-5, and BH-6. Nor have alternative plans for compliance with new source performance standards been submitted for Emission Unit Nos. BH-4, BH-5, and BH-6.

COUNT I

Prevention of Significant Deterioration (PSD) Violations

86. The Roquette corn wet milling facility at Keokuk, Iowa, is located within an area designated as either in attainment with primary and secondary NAAQS or unclassified. 40 C.F.R. § 81.316.

87. The Roquette corn wet milling facility is a "major stationary source" as defined in Iowa Code section 455B.131(7) and 40 C.F.R. sections 52.21(b)(1)(i)(a) and (b).

88. Sulfur dioxide is a "regulated NSR pollutant" as defined in 40 C.F.R. section 52.21(b)(50).

89. Roquette's change in methods of operation from use of coal to a blended fuel of coal and petroleum coke for Emission Unit Nos. BH-4, BH-5, and BH-6 constituted a "modification" as defined in 42 U.S.C. sections 7411(a) and 7479(2)(C).

90. Roquette's change in methods of operation from use of coal to a blended fuel of coal and petroleum coke for Emission Unit Nos. BH-4, BH-5, and BH-6 resulted in a "net emissions increase," as defined in 40 C.F.R. sections 52.21(b)(3)(i)(a) and (b), which was "significant," as defined in 40 C.F.R. section 52.21(b)(23)(i), and constituted a "significant net emissions increase," as defined in 40 C.F.R. § 52.21(b)(40), for sulfur dioxide, and a "major modification" as defined in 40 C.F.R. section 52.21(b)(2)(i).

91. Roquette changed its method of operation by changing from use of coal to a blended fuel of coal and petroleum coke without applying for and obtaining a PSD permit in violation of 567 Iowa Admin. Code 22.1(1) and 22.4; 40 C.F.R. sections 52.21(i)(1) and the requirements of 40 C.F.R. sections 52.21(k)(1), 52.21(k)(2), 52.21(m)(1)(iv), 52.21(n), 52.21(o)(1), and 52.21(o)(2).

92. Since initiating the use of a blended fuel of coal and petroleum coke, Roquette has failed to apply the best available control technology (BACT) to control sulfur dioxide emissions from Emission Unit Nos. BH-4, BH-5, and BH-6, in violation of 567 Iowa Admin. Code 22.4 and 40 C.F.R. section 52.21(j)(3).

WHEREFORE Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Roquette America, Inc. pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 22.1(1), 22.4; and 40 C.F.R. sections 52.21(i)(1), 52.21(j)(3), 52.21(k)(1), 52.21(k)(2), 52.21(m)(1)(iv), 52.21(n), 52.21(o)(1), and 52.21(o)(2); not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and,
- b. permanently enjoin Defendant Roquette America, Inc. from further violations of 567 Iowa Admin. Code 22.1(1), 22.4; and 40 C.F.R. sections 52.21(i)(1), 52.21(j)(3), 52.21(k)(1), 52.21(k)(2), 52.21(m)(1)(iv), 52.21(n), 52.21(o)(1), and 52.21(o)(2).

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

COUNT II

New Source Performance Standards (NSPS) Violations

93. Emission Unit Nos. BH-4, BH-5 and BH-6 are each subject to the requirements of 567 Iowa Admin. Code sections 23.1(2), 23.1(2)"ccc"; and 40 C.F.R. Part 60 and Subpart Db.

94. Roquette's change in the method of operation by changing from coal to a blended fuel of coal and petroleum coke resulted in an increase in the emission rate to the atmosphere of sulfur dioxide constituting a "modification" as defined in 42 U.S.C. section 7411(a) and 40 C.F.R. section 60.2, and making Emission Unit Nos. BH-4, BH-5, and BH-6, each an "affected facility" as defined in 40 C.F.R. section 60.2.

95. Roquette has failed to reduce its emissions to no more than 10 percent of the potential sulfur dioxide emission rate for Emission Unit Nos. BH-4, BH-5, and BH-6, in

violation of 567 Iowa Admin. Code sections 23.1(2) and 23.1(2)"ccc," and 40 C.F.R. sections 60.42b(a) and 60.45b(a).

WHEREFORE Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Roquette America, Inc. pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code sections 23.1(2), 23.1(2)"ccc", and 40 C.F.R. sections 60.42b and 60.45b; not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and,
- b. permanently enjoin Defendant Roquette America, Inc. from further violations of 567 Iowa Admin. Code sections 23.1(2), 23.1(2)"ccc", and 40 C.F.R. sections 60.42b and 60.45b.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

COUNT III

Failure to Comply with Administrative Consent Order No. 2003-AQ-04

96. Roquette has failed to timely submit a complete PSD permit application for Emission Unit No. BH-4, in violation of Administrative Consent Order No. 2003-AQ-04, Section IV, paragraph 5.

97. Roquette has failed to timely submit a complete PSD permit application for Emission Unit No. BH-5, in violation of Administrative Consent Order No. 2003-AQ-04, Section IV, paragraph 6.

98. Roquette has failed to timely submit a complete PSD permit application for Emission Unit No. BH-6, in violation of Administrative Consent Order No. 2003-AQ-04, Section IV, paragraph 7.

99. Roquette has failed to timely submit a written compliance plan detailing how Roquette would comply with the NSPS requirements contained in 40 C.F.R. Part 60, Subpart Db, for each of Emission Unit Nos. BH-4, BH-5, and BH-6, in violation of Administrative Consent Order No. 2003-AQ-04, Section IV, paragraph 8.

WHEREFORE Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Roquette America, Inc. pursuant to Iowa Code section 455B.146 for each day of violation of Administrative Consent Order No. 2003-AQ-04, Section IV, paragraphs 5, 6, 7 and 8, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and,
- b. permanently enjoin Defendant Roquette America, Inc. from further violations of Administrative Consent Order No. 2003-AQ-04, Section IV, paragraphs 5, 6, 7 and 8.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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